



STATE OF SOUTH DAKOTA, COUNTY OF MINNEHAHA
IN CIRCUIT COURT, 2ND JUDICIAL DISTRICT

**COYOTE ENTERPRISES, LLC d/b/a DAKOTA PC
WAREHOUSE**

Plaintiff/Petitioner

vs.

NZXT, INC.

Defendant/Respondent

Case No.:

AFFIDAVIT OF SERVICE OF
SUMMONS; COMPLAINT

Received by **Orson Avalos**, on the **21st day of June, 2023 at 9:56 AM** to be served upon **NZXT, INC. c/o Johnny Chun Ju Hou, REGISTERED AGENT at 15736 Valley Boulevard, City of Industry, Los Angeles County, CA 91744.**
On the **21st day of June, 2023 at 3:32 PM**, I, **Orson Avalos, SERVED NZXT, INC. c/o Johnny Chun Ju Hou, REGISTERED AGENT at 15736 Valley Boulevard, City of Industry, Los Angeles County, CA 91744** in the manner indicated below:

CORPORATE SERVICE, by personally delivering **1** copy(ies) of the above listed documents to the named Corporation, by serving **stacey lou**, on behalf of said Corporation.

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:

I delivered the documents to stacey lou who identified themselves as the person authorized to accept with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a brown-haired Asian female contact 35-45 years of age, 5'-5'4" tall and weighing 120-140 lbs.

Service Fee Total: **\$140.00**

Per 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

NAME:


Orson Avalos

2023060623

Server ID #

06/21/2023

Date



REF: REF-13063400

Page 1 of 1

Tracking #: 0108949257



STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:SS
COUNTY OF MINNEHAHA) SECOND JUDICIAL CIRCUIT

0-0

COYOTE ENTERPRISES, LLC d/b/a : 49CIV23-_____
DAKOTA PC WAREHOUSE

Plaintiff,

V.

NZXT, INC.

Defendant.

0-0

Plaintiff, Coyote Enterprises, LLC d/b/a Dakota PC Warehouse (“Dakota PC”), states and alleges as follows:

PARTIES

1. Dakota PC is a South Dakota limited liability company, with its principal place of business in Vermillion, South Dakota. Dakota PC provides warehousing and assembly services for computer systems distributors, and also distributes retail products from a store in Vermillion, South Dakota. Its sole manager is Keith Thomas.

2. Defendant, NZXT, Inc. (“NZXT”), is a Delaware corporation, with its principal place of business located at 15736 East Valley Boulevard, City of Industry, California 91744. NZXT is a distributor of personal computers and accessories, and has systematically and continuously distributed such products throughout the United States, including to South Dakota.

Case No. 49CIV23-_____
Complaint

JURISDICTION AND VENUE

3. This is a civil action asserting claims for breach of contract and for enforcement of a security interest. This Court has personal jurisdiction over NZXT under SDCL § 15-7-2(1) because it conducts systematic and continuous business within the state of South Dakota, and because some of the products at issue in this matter were shipped to South Dakota residents.

4. Venue is proper in Minnehaha County under SDCL § 15-5-6, because no Defendant resides in this state.

FACTS

5. In approximately September 2020, NZXT and Dakota PC began a business relationship whereby Dakota PC acted as a contractor for the warehousing and assembly of NZXT computer products.

6. On October 12, 2020, the Director of Operations for NZXT, Eugene Chang, sent to Keith Thomas via email a “Service Agreement for Warehousing, Assembly, and Fulfillment” (the “Contract”).

7. The Contract, in Word document format, contained comments and edits from Eugene Chang and NZXT’s attorney, Michael Borenstein.

8. The terms of the Contract required Dakota PC to “maintain a warehouse and inventory of components and finished systems, assemble components into finished systems, and fulfill finished systems to end customers” in exchange for payment from NZXT.

9. Section 1(a) of the Contract states: “This ~~Contract~~ Agreement, including any the attached Exhibits, must be accepted within 30 days from the proposal date by signature of NZXT ~~at the end of the contract~~. In the absence of written acceptance, the act of tendering goods

Case No. 49CIV23-_____
Complaint

described herein for storage or other services by contractor within 30 days from the proposal date shall constitute such acceptance by NZXT.”¹

10. After the October 12, 2020, email from Eugene Chang forwarding the Contract to Keith Thomas, the parties immediately began performing under the Contract, whereby NZXT tendered goods to Dakota PC’s facility for warehousing, assembly, and fulfillment, thereby accepting the terms of the Contract.

11. Under Section 16 of the Contract, entitled “Credit and Payment Terms,” Dakota PC was to invoice NZXT bi-weekly for services rendered, with payment due thirty days from the invoice date. The Contract also authorized Dakota PC to assess late charges on all unpaid invoices.

12. Additionally, Section 8 of the Contract, entitled “Lien Rights,” granted Dakota PC a “general lien against the goods deposited with it, and on the proceeds from the sale for all proper charges provided in this contract, including storage, receiving, shipping, labeling charges, claims for money advanced, interest, insurance, transportation, labor, wrapping, weighing, and all other charges and expenses in relation to the goods and for the balance on any other accounts that may be due, all reasonable charges and expenses for notice and advertisement of sale and sale of property when the NZXT defaults, and for all costs including court costs and reasonable attorney’s fees in collecting charges or enforcing this lien[.]”

13. After beginning performance under the Contract, Dakota PC invoiced NZXT bi-weekly for services rendered.

14. In January 2023, NZXT began wrongfully withholding amounts due Dakota PC on its December invoices.

¹ Overstricken and underlined text in quotations from the Contract represent the edits from attorney Michael Borenstien as they appear in the Contract Word document.

Case No. 49CIV23-_____
Complaint

15. Since January 2023, NZXT has wrongfully withheld payment on additional invoices resulting in NZXT's breach of the Contract's Payment and Credit Terms.

16. On March 23, 2023, Keith Thomas sent a Notice of Termination of the Contract to NZXT's Director of Global Operations, Ben Williamson, and its Chief Operating Officer, Scott Jameson, citing NZXT's failure to pay the undisputed invoices and providing NZXT twenty days to cure its unexcused default, as required by Section 16 of the Contract.

17. NZXT did not cure its payment default within the twenty-day cure period and has yet to pay the undisputed invoices. Instead, NZXT agreed the Contract was terminated, and ordered Dakota PC to ship NZXT's product back to NZXT. NZXT remains in breach of the Contract for non-payment.

18. To secure payment for the undisputed invoices, Dakota PC has exercised its lien rights under the Contract on NZXT products in Dakota PC's possession by retaining possession of those goods.

COUNT 1 – BREACH OF CONTRACT

19. Dakota PC realleges and incorporates every allegation of the above Paragraphs 1 through 18 as if fully set forth herein.

20. The Contract is a legally binding agreement as evidenced by the acceptance provisions in Section 1(a) and the parties' performance under the contract since 2020.

21. Under the Credit and Payment terms of the Contract, Dakota PC is entitled to payment from NZXT for services rendered.

22. NZXT has wrongfully withheld payment from Dakota PC for services rendered under the Contract.

23. By wrongfully withholding payment, NZXT is in breach of the Contract.

{05168144.1}

Case No. 49CIV23-_____
Complaint

24. NZXT's unexcused and uncured breach of the Contract has resulted in damages to Dakota PC in an amount to be proven at trial, plus prejudgment interest, attorneys' fees, and costs.

COUNT 2 – ENFORCEMENT OF SECURITY INTEREST

25. Dakota PC realleges and incorporates every allegation of the above Paragraphs 1 through 24 as if fully set forth herein.

26. Under Section 8 of the Contract, Dakota PC has a security interest in NZXT's goods stored on Dakota PC's premises, which is further created, attached, and perfected by Dakota PC's possession of those goods.

27. Under this security interest, the goods in Dakota PC's possession are collateral securing NZXT's payment for the unpaid invoices referenced above.

28. Given NZXT's failure to timely pay its invoices for services rendered under the Contract, Dakota PC is entitled to dispose of the collateral in a commercially reasonable manner and to use the proceeds of the disposal to satisfy the debts NZXT legally owes Dakota PC.

WHEREFORE, Dakota PC requests a judgment:

1. Against NZXT on Count 1, awarding Dakota PC an amount adequate to compensate it for the unpaid invoices, including interest thereon.
2. Against NZXT and in favor of Dakota PC authorizing Dakota PC to liquidate the NZXT inventory in its possession currently securing NZXT's payment for the unpaid invoices and to collect the proceeds for the same and apply them to the debt NZXT owes, plus any attorneys' fees, costs of sale, or other costs of disposition as provided by SDCL Chapter 57A-9.
3. Awarding Dakota PC any allowable pre- and post-judgment interest.

{05168144.1}

Case No. 49CIV23-_____
Complaint

4. Awarding Dakota PC's attorney fees and costs expended in collecting the amounts owed by NZXT as explicitly authorized in Section 8 and 16(g) of the Contract.

5. Granting any additional relief as the Court deems just.

Pursuant to SDCL § 15-6-38(b), Plaintiff hereby demands a trial by jury on all matters so triable.

Dated this 21st day of June, 2023.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ Sander J. Morehead

Sander J. Morehead

Thomas P. Schartz

P.O. Box 5027

300 South Phillips Avenue, Suite 300

Sioux Falls, SD 57117-5027

Phone (605) 336-3890

Fax (605) 339-3357

Sander.Morehead@woodsfuller.com

Tom.Schartz@woodsfuller.com

*Attorneys for Coyote Enterprises, LLC d/b/a Dakota
PC Warehouse*